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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 6560
Victory Ohio SuperPAC)

SECOND GENERAL COUNSEL'S REPORT

I. ACTIONS RECOMMENDED

We recommend that the Commission: (1) take no further action with respect to Victory Ohio SuperPAC's alleged violations of 2 U.S.C. § 434(b) by failing to file one or more independent expenditure reports; (2) take no further action with respect to Victory Ohio SuperPAC's alleged violations of 2 U.S.C. § 441d(a) by failing to include a complete disclaimer in robocalls; (3) take no further action as to the allegations that Victory Ohio SuperPAC violated 2 U.S.C. §§ 433 and 434 by failing to register and report with the Commission as a political committee; (4) close the file; and (5) send the appropriate letters.

II. INTRODUCTION

On January 8, 2013, the Commission found reason to believe that Victory Ohio SuperPAC violated the independent reporting and disclaimer provisions of the Federal Election Campaign Act, as amended (the "Act"), in connection with robocalls that it made to voters before the March 6, 2012, Democratic primary election for the U.S. House of Representatives in Ohio's Second Congressional District, and authorized an investigation. *See* Certification, MUR 6560 (Jan. 8, 2013). The Commission authorized a limited investigation to determine the identity of the individuals responsible for Victory Ohio SuperPAC; to ascertain the cost, timing, and number of calls made; and to identify any other activities that Victory Ohio SuperPAC conducted in connection with federal elections during the 2012 election cycle. The Commission took no action at that time with respect to the allegation that Victory Ohio SuperPAC violated

2 U.S.C. §§ 433 and 434 by failing to register and report as a political committee. *Id.*

Despite conducting an investigation and consulting with law enforcement, we have not been able to identify the individual or individuals responsible for Victory Ohio SuperPAC. Because we believe that we have exhausted our credible leads and any further investigation would not be a prudent or effective use of the Commission's limited resources, we recommend that the Commission take no further action in this matter and close the file. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

III. SUMMARY OF INVESTIGATION

The Complaint in this matter alleged that from approximately March 3, 2012, until March 6, 2012, Democratic voters in Ohio's Second Congressional District received robocalls in connection with the March 6, 2012, Democratic primary election urging them to vote for Barack Obama for President, Sherrod Brown for Senate, and William Smith for Congress. Compl. at 2. The robocalls stated:

We're calling all Democrats and reminding them to cast your ballot for President Obama and Senator Brown on Tuesday. Also vote for William Smith for Congress. William Smith has an opponent that describes himself as a Reagan Conservative. William Smith's opponent was already sanctioned by the Ohio Elections Commission for not telling the truth. Please don't make a mistake and embarrass the party. Vote for William Smith, the real Democrat for Congress. This has been paid for by the Victory Ohio SuperPAC.

Id. The Complaint included audio recordings of two versions of the robocall: a longer version using the script above and a shorter version that omits the first two sentences of the script. Compl., Ex. A.

According to a press article cited in the Complaint, the telephone number associated with the robocalls was "a non-working phone number from the Cleveland suburbs." First Gen. Counsel's Rpt. at 3. Through publicly available information, we were able to identify a

1 telephone number associated with the robocalls. *Id.* Although we found no public listing for the
2 person or entity associated with the telephone number, an online subscription database identified
3 the telephone number as a Kirtland, Ohio cellular telephone number serviced by Alltel
4 Communications, Inc. *Id.*

5 Accordingly, we served a subpoena on Verizon Wireless, Alltel Communication's
6 successor corporation,¹ for call records associated with that telephone number from February 1,
7 2012, to March 31, 2012. In response to our subpoena, Verizon Wireless stated that the number
8 was merely a routing line generated randomly by the switch with no assigned subscriber. *See*
9 Fax from Joey Mongno, Analyst, Verizon Wireless, to Kasey Morgenheim, Attorney, FEC (July
10 25, 2013). A representative of Verizon Wireless further stated that because Verizon only
11 retained "switch records" for a year, Verizon was not able to identify the numbers preceding and
12 following the switch number, which may have provided information concerning the identity of
13 the subscriber associated with that number. *See* Memorandum to File from James Pawlik,
14 Investigator, FEC (Aug. 8, 2013).

15 Following our unsuccessful attempt to acquire call records, we engaged with the
16 Complainant to determine if he had any additional information concerning the identity of the
17 caller. *See* Report of Investigation ("ROI") (Oct. 29, 2013); ROI (Nov. 7, 2013); Aff. of David
18 Krikorian (Dec. 13, 2013) ("Krikorian Aff."). The Complainant informed us that he believed
19 that the identity of the voice on the robocalls was

20 The Complainant asserted that when he first filed his Complaint, he did not know or

¹ We circulated these discovery documents to the Commission on June 17, 2013. As we noted at that time, our original contact at Allied Wireless Communications Corporation, the company that serviced the number during the period relevant to this matter, instructed us to fax the subpoena to Allied Wireless. When we sent the subpoena to Allied Wireless, however, they instructed us to instead address the subpoena to Verizon Wireless, which we did on July 8, 2013.

1 have suspicions concerning the identity of the speaker. The Complainant stated that on or
2 around October 2012, however, an acquaintance, , told the Complainant that he
3 believed that the identity of the speaker was because the voice in the robocalls
4 matched a different "voice blast" telephone message previously recorded and disseminated by
5

6 The Complainant told us that in December 2012 he sought the services of a voice
7 analysis expert to compare the voices in the two recorded versions of the robocall with that in the
8 "voice blast." The voice analysis expert's forensic report concluded with 80 percent certainty
9 that the voice speaking in all three recordings was the same individual. The Complainant
10 provided us with an affidavit, copies of the recordings in question, the voice analysis expert's
11 forensic report, and additional information that he believed relevant to the robocalls,² including
12 contact information for other individuals who received the robocalls. *See Krikorian Aff.*;
13 E-mails from David Krikorian to James Pawlik, Investigator, FEC (Oct. 29, Oct. 30, and
14 Nov. 5, 2013).

15 The Complainant also informed us that, in addition to filing a Complaint with the
16 Commission, he filed complaints with the

17 He stated that he provided the same information concerning
18 and the voice analysis expert's forensic report to those other agencies.

² The Complainant told us that he believed that the individual or individuals responsible for the robocalls were "operatives" of Representative Jean Schmidt, who would have been his Republican opponent in the general election for the U.S. House of Representatives in Ohio's Second Congressional District. The Complainant stated that he believed that William Smith, who the robocalls advocated and who defeated the Complainant in the Democratic primary, was a "shadow candidate" placed on the ballot for the benefit of Representative Schmidt in the general election. Accordingly, he provided us with additional information and contacts that he believed supported this theory. We did not contact any of those individuals as we do not believe this information provides a viable lead to identify the individual or individuals responsible for Victory Ohio SuperPAC.

At Krikorian's suggestion, we conducted an informal telephone interview with

See ROI (Feb. 25, 2014). stated that he knew

and had interacted with her several times in person and over the phone.

further stated that when he received a "voice blast" telephone call from

he thought that the voice sounded the same as the one on the robocalls.

stated that he concluded that the voice in the robocalls may have been based on his

own perception and that he had no other corroboration that was the voice on the robocalls.

told us that he was still "roughly 90 percent certain" that

was the voice on the robocalls, but admitted that he was less certain based on her denial to

, as thinks that is an honest person.⁴

After we spoke with

See Memorandum to File from Kasey Morgenheim, Attorney, FEC (Mar. 14,

2014).

The Commission received Krikorian's Complaint in this matter shortly thereafter, on April 23, 2012, which formed the basis for our recommendations in the First General Counsel's Report.

⁴ The Complainant named another potential person of interest, , who allegedly is an acquaintance and colleague of and . We determined not to interview because of the lack of information corroborating the Complainant's speculation about involvement with and the robocalls, and the fact that denied any involvement with the robocalls and Victory Ohio SuperPAC.

IV. ANALYSIS

Based on our investigation, we have not been able to identify the individual or individuals responsible for Victory Ohio SuperPAC with reasonable certainty. believed that the voice on the robocalls was based on his personal dealings with her, and the Complainant obtained the opinion of a purported expert in voice analysis providing an 80 percent correlation between the voice of the unknown caller and a known recording of

We have no other credible leads concerning the identity of the voice on the robocalls or the person responsible for Victory Ohio SuperPAC.

Because we believe that we have exhausted all credible leads, the identity of the person or persons responsible for the entity known as Victory Ohio SuperPAC remains uncertain, and any further investigation would not be a prudent or effective use of the Commission's limited resources, we recommend that the Commission take no further action with respect to Victory Ohio SuperPAC's violations of 2 U.S.C. § 434(b) by failing to file one or more independent

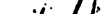
1 expenditure reports and 2 U.S.C. § 441d(a) by failing to include a complete disclaimer in
2 robocalls. *See Heckler*, 470 U.S. 821.

3 Moreover, because we have been unable to identify the individual or individuals
4 responsible for Victory Ohio SuperPAC, the exact cost, timing, and number of calls made, or any
5 other activities that Victory Ohio SuperPAC conducted in connection with federal elections
6 during the 2012 election cycle, we recommend that the Commission also take no further action
7 as to the allegations that Victory Ohio SuperPAC violated 2 U.S.C. §§ 433 and 434 by failing to
8 register and report with the Commission as a political committee. *See Heckler*, 470 U.S. 821.

9 **V. RECOMMENDATIONS**

- 10 1. Take no further action with respect to Victory Ohio SuperPAC's violations of 2 U.S.C.
11 § 434;
12
13 2. Take no further action with respect to Victory Ohio SuperPAC's violations of 2 U.S.C.
14 § 441d(a);
15
16 3. Take no further action as to the allegations that Victory Ohio SuperPAC violated
17 2 U.S.C. §§ 433 and 434;
18
19 4. Close the file; and
20

Date 6/17/14


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